Tunas (Pte) Ltd v Mayer Investment Pte Ltd & Ors

HIGH COURT (SINGAPORE) – SUIT NO 7000 OF 1985
COOMARASWAMY J
21 FEBRUARY 1989

Civil Procedure – Ex parte injunction – Duty of applicant to make full and frank disclosure – Injunction sought not to be wider than necessary to protect applicant's interest – Adequacy of damages if injunction not granted – Undertaking by another to indemnify applicant showing the adequacy of damages – English practice directions – Whether binding – UK Rules of the Supreme Court, O 29 r 1 – Rules of the Supreme Court 1970, O 20 r 1 – Land Titles Act (Cap 157, 1985 Ed), ss 5(1), 37(1), 41(3), (4), 67(2) & 104(1)

Land Law – Interest in parking lot reserved to seller of land – Caveat lodged – Injunction sought against registration of conflicting interest – Whether Registrar of Titles proper party to suit

Equity – Laches – Delay in registering interest in land – Effect on injunction

The plaintiffs ('the seller') sold a building to the first defendants ('the buyer') except for certain parts ('the excepted parts'). Under the sale contract, the buyer covenanted to grant to the seller the right to use certain parking lots in the building, with such right to benefit the owners of the excepted parts. The building was sold to S, who executed a deed covenanting to ensure that when she sold the building or part thereof, she would reserve the parking lots for the seller. S in turn sold the building to C. During this time the seller had filed several caveats in respect of their parking lots but subsequently withdrew them. The building was then sold to C, whose transfer made no reservation for the parking lots. C mortgaged the building to W, again with no mention of the seller's interest in the parking lots. C lodged the transfer to themselves and then W, as mortgagees, filed their caveat. The seller then lodged a caveat in respect of the parking lots. However, during the period when the building was transferred to C and then mortgaged to W, the seller's caveat was not present. C went into receivership and W exercised their power of sale and sold the building to J, who soon after, lodged a transfer of the building to themselves for issue of the certificate of title. On lodgment, the Registry of Titles gave the seller notice under s 104 of the Land Titles Act of the lodgment. The seller started an action and obtained an injunction against the Registrar of Land Titles.

The seller filed an affidavit in support of their application for the injunction. This affidavit, however, omitted certain facts. The seller later amended their statement of claim to include additional facts.

Held, discharging the injunction:

(1) An applicant for an ex parte injunction has a duty to make full and frank disclosure of all material facts.

(2) A failure to do so can preclude a court dealing with the application on its merits.

(3) This duty of full and frank disclosure is found in the English practice directions. Such directions dealing with matters of substantive law or with practice and procedure, and judgments dealing with such directions may be persuasive or even binding on a Singapore court depending on the branch of law. The binding nature can depend on whether the topic comes within a section of a local statute which imports English law.

(4) The English practice direction here calls attention to the United Kingdom's Rules of the Supreme Court O 29 r 1 which is identical to the similarly numbered rule in Singapore. The practice direction merely embodies principles from a long line of cases which has a similar growth in Singapore. A local lawyer could thus treat para 3(2) and the rest of part B as virtually binding.

(5) The seller had failed to disclose the following facts: that they had withdrawn their caveats twice and had thus abandoned their claims, that C had lodged a transfer instrument against the building, that the transfer instrument was registered by the signature and seal of the Registrar, that W had registered its mortgage against the building. In addition, material facts that were only included in the seller's amendments to their statement of claim and not in the original statement itself constituted a suppression of material facts. These were all grounds for the discharge of the injunction.

(6) The buyer had undertaken to indemnify the seller for any fees that the seller might have to pay in the event that C refused to honour the agreement made between the seller and S. This showed that in the contemplation of the seller, damages would have been an adequate remedy for the loss of the use of the excepted property. The adequacy of damages was another ground to discharge the injunction.

(7) The terms of an ex parte application should be restricted to the minimum necessary to protect the claimed interest of the applicant. Here, although the excepted parts were the only parts of the building that the seller claimed an interest in, the injunction obtained, however, covered the entire building. This by itself was sufficient to get the injunction discharged.

(8) Section 5 of the Land Titles Act created the legal personality called the 'Registrar of Titles'. The seller's action against the Registrar of Land Titles was against a non-existent legal personality, and therefore the fourth defendant was not a party to the proceedings.

(9) The Registrar of Titles has no interest in the property and only carried out statutory functions. He had to comply with any injunction granted and thus he should not have been made a party to the proceedings. The application to strike out the writ against the Registrar was therefore granted.

(10) The seller acquired rights in the excepted property but took nearly a year to file their caveat. This amounted to laches and was yet another ground for the discharge of the injunction. The injunction was therefore discharged.

[*Editorial Note*: The plaintiffs have appealed to the Court of Appeal vide Civil Appeal No 9 of 1986.]

Cases referred to

1 *Castelli* v *Cook* (1849) 7 Hare 89; 68 ER 36 (refd)
2 *Dalglish* v *Jarvie* (1850) 2 Mac & G 231; 42 ER 89 (refd)
3 *R* v *Kensington Income Tax Commissioners* [1917] 1 KB 486 (refd)
4 *Thomas A Edison Ltd* v *Bullock* (1912) 15 CLR 679 (refd)
5 *Thermax Ltd* v *Schott Industrial Glass Ltd* [1981] FSR 289 (refd)
6 *Hari Singh* v *Sundarammal* [1965] 2 MLJ 174 (refd)
7 *Leong Teng Hin* v *Tsuneyosu Tobuse* [1979] 2 MLJ 61 (refd)
8 *Blakemore* v *Glamorganshire Canal Navigation* (1832) 1 My & K 154; 39 ER 639 (refd)

Legislation referred to
Land Titles Act (Cap 157, 1985 Ed) ss 5(1), 37(1), 41(3), 41(4), 67(2), 104(1)
Rules of the Supreme Court 1970 O 29 r 1
Rules of the Supreme Court [UK] O 29 r 1

Tan May Tee (Ms) for the plaintiffs.
Loh Boon Huat for the third defendants.
Jocelyn Ong (Ms) (State Counsel) for the fourth defendant.

Cur Adv Vult

Coomaraswamy J: There is a duty upon an applicant for an ex parte injunction to make full and fair disclosure of all facts, not only those in his favour but also those in favour of the adversary that could have a bearing on his application. There is a long line of authority asserting this proposition as well as the proposition that failure to do so can preclude a court dealing with the application on its merits or lack of them.

In *Castelli* v *Cook*[1] at p 94, Sir James Wigram, Vice Chancellor, said:

> The rule, as I understand it, is this: that a plaintiff applying ex parte comes (as it has been expressed) under a contract that he will state the whole case fully and fairly to the court. If he fails to do that, and the court finds, when the other party applies to dissolve the injunction, that *any material fact has been suppressed or not properly brought forward*, the plaintiff is told that the court will not decide on the merits, and that, as he has broken faith with the court, the injunction must go. (Emphasis added)

The applicant's failure to ascertain all material facts, and the real (or pretended) ignorance of the importance of any such fact is no excuse for failure to bring them to the judge's notice on the ex parte application.

Lord Langdale made this clear in *Dalglish* v *Jarvie*[2] at p 241. He said that it was:

> ... the duty of a party who comes for an injunction, the effect of which is to deprive another of his legal right, to ascertain for himself what are the facts which are material to be brought forward, and it (is) no excuse for him to say that he was not aware of their importance.

These words were approved by the English Court of Appeal in the case of *R* v *Kensington Income Tax Commissioners*[3] by Cozens-Hardy MR at p 504 and Scrutton LJ at p 514. Cozens-Hardy MR also cited with approval the passage, abovementioned, from *Castelli* v *Cook*[1].

Even before *R* v *Kensington Income Tax Commissioners*,[3] in analysing the English authorities prior to 1912, Isaacs J (as he then was) of the Australian High Court said in *Thomas A Edison Ltd* v *Bullock*[4] at p 682:

> Uberrima fides is required, and the party inducing the court to act in the absence of the other party, fails in his obligation unless he supplies the place of the absent party to the extent of bringing forward all the material facts which that party would presumably have brought forward in his defence to that application. Unless that is done, the implied condition upon which the court acts in forming its judgment is unfulfilled and the order so obtained must almost invariably fall.

'The principle (of full and fair disclosure) is not limited to cases where there is a deliberate intention to mislead but extends to cases where material facts have not been disclosed even innocently,' said Browne-Wilkinson J (as he then was) in *Thermax Ltd* v *Schott Industrial Glass Ltd*[5] at p 295.

A practice direction of the Queen's Bench Divisional Court on procedure in ex parte applications to a judge in chambers was made on 30 March 1983. It was an inevitable consequence of cases, some of which are referred to above. English practice directions do not establish anything necessarily binding or mandatory for Singapore. However, practice directions can deal purely with administrative matters and 'logistics' (eg lodge documents by 3 pm) or with matters almost of substantive law or of practice or procedure. When practitioners in England carry out what is required by the latter type of practice direction, the practice and procedure adopted by them leads to judgments which can be persuasive, highly persuasive or even regarded as binding upon a Singapore (or other common law country) court. This naturally varies with the branch of law. The binding nature can depend on whether the topic comes within the appropriate sections of the Civil Law Act or other legislation 'importing' English law into Singapore.

The practice direction referred to, inter alia, covers the mandatory content of an applicant's affidavits in an ex parte application for an interim injunction. The direction appears in [1983] 1 All ER 1119 at 1120 and [1983] 1 WLR 433 at 434. Part B para 3(1) starts off by calling attention to O 29 r 1 of the Rules of the Supreme Court which is identical to the similarly numbered rule in Singapore. Paragraph 3(2) reads:

> The affidavit in support should contain a clear and concise statement:
> (a) of the facts giving rise to the claim against the defendant in the proceedings;
> (b) of the facts giving rise to the claim for the interlocutory relief;
> (c) of the facts relied on as justifying application ex parte, including details of any notice given to the defendant or, if none has been given, the reasons for giving none;
> (d) of any answer asserted by the defendant (or which he is thought likely to assert) either to the claim in the action or to the claim for interlocutory relief;
> (e) of any facts known to the applicant which might lead the court not to grant relief ex parte;
> (f) of the precise relief sought.

As should now be clear, this practice direction merely embodies principles from a long line of decided cases. It was obviously made necessary by the rapid growth in England of ex parte applications for interlocutory injunctions in the recent past.

There has been a similar growth in Singapore. A practitioner in Singapore applying ex parte for an injunction (or a prerogative writ as in the *Kensington Income Tax* case[3]) cannot, at best, possibly go wrong if he treated the quoted part and the rest of part B of this practice direction as virtually binding on him. He would, on the lowest scale, be foolish and doing his client a gross and serious disservice if he ignored it.

The principles I have referred to have also long been applied in Singapore and Malaysia in ex parte applications for attachment before judgment under the respective Debtors Acts. Chelvasingam MacIntyre J in the Ipoh case of *Hari Singh* v *Sundaramma*[6] in setting aside such an attachment said:

> It is settled law that on an ex parte application, the person making the application should show the utmost good faith by not holding back any vital information touching upon matters pertinent to the application.

In this connection, also relevant is the judgment of Sinnathuray J in *Leong Teng Hin* v *Tsuneyosu Tobuse*.[7]

I identify the plaintiffs, the four defendants and others involved in the transactions that led to these proceedings as follows:

Tunas	: Tunas (Pte) Ltd, the plaintiffs.
Mayer	: Mayer Investment Pte Ltd, the first defendants.
Suwarna	: Grace Suwarna, the second defendant.
Jessie	: Jessie Investment (Pte) Ltd, the third defendants.
Registrar	: Registrar of Land (sic) Titles whose proper and statutory designation is 'Registrar of Titles' under s 5(1) of the Land Titles Act (Cap 276, 1970 Ed; now Cap 157, 1985 Ed), the fourth defendant.
Crestpoint	: Crestpoint Estates Ltd, a Hongkong company.
Carrian	: Carrian Realty (Singapore) Pte Ltd, a wholly owned subsidiary of Crestpoint.
Wardley	: Wardley Ltd.

The properties involved are identified as follows:

Tunas Building	: A building located at 114 Anson Road, Singapore 0207, with a floor area of 5,652 sq metres or thereabouts and consisting of two basements, a ground floor, 27 floors and a rooftop terrace garden.
19th floor	: 19th floor of Tunas Building.
25th, 26th & 27th floors	: 25th, 26th and 27th floors of Tunas Building.
14 parking lots	: 14 specified parking lots on the second floor of Tunas Building.
The property	: Tunas Building, exclusive of the 19th, 25th, 26th and 27th floors.

References to the Act are references to the Land Titles Act (Cap 157, 1985 Ed).

The transactions that led to the application before me are complicated and involved. For present purposes I will only set out those that have a bearing on the issues before me.

On 22 January 1981 Tunas sold Tunas Building to Mayer exclusive of the 19th, 25th, 26th and 27th floors, ie the property. By the contract of sale, Mayer covenanted with Tunas by cl 25 to grant to Tunas 'the right, privilege or licence to use' all parking lots on the second floor 'to the intent that such right or licence shall run as a benefit to the owners of the 19th, 25th, 26th and 27th floors'. A subsidiary strata certificate of title to the property was issued on 24 December 1981.

It is not necessary for me to decide at this stage whether whatever rights Tunas had in the second floor parking lots constitute an 'easement' or a 'licence' under the Land Titles Act, if at all they do so. As for the register, there was nothing in it to give notice to the world of the interest (if any) of Tunas in the 14 parking lots when Mayer had itself registered in the Land Titles Registry as the proprietor and was issued with a certificate of title.

In the meantime, Mayer had on 22 June 1981 sold the property to Suwarna. Suwarna took no steps to have her interest registered in the register or noted by way of caveat on the certificate of title. Suwarna was aware of the transactions between Tunas and Mayer concerning the parking lots and on 6 August 1981 the three parties executed a deed whereby Suwarna confirmed she would ensure that upon her selling the building or part thereof, she would reserve the use of what was now restricted to the 14 parking lots for Tunas.

This deed of 6 August 1981 is referred to in para 8 of Tong Djoe's affidavit in support of the ex parte application. It is exhibited as 'TJ-3'. Paragraph 7 of the recital to the deed states that the 14 car park lots are 'delineated in red in the plan attached hereto'. There is in fact no plan attached to the deed that was exhibited to Tong Djoe's affidavit. As a separate exhibit was attached a copy of a caveat which in turn had a plan attached to it. The caveat is in fact dated 16 June 1983.

The question that begs an answer is why the plaintiffs in making a copy of the deed of 6 August 1981 omitted to photocopy the plan that was part of the deed and have it annexed to the copy of the deed.

On 29 September 1981 Suwarna agreed to sell Tunas Building to Crestpoint subject to the existing tenancies and licences set out in the third schedule to the agreement of that date. She also warranted that 'the total rentable area ... as represented in the fourth schedule ... is true and accurate in all material aspects'. In the fourth schedule under the heading 'Net Rentable Area' was an entry which reads '14 lots (ie the 14 parking lots) on the second floor reserved for use of the owners of the 25th, 26th and 27th floors'. She herself retained ownership of the 19th floor.

Crestpoint took steps to protect its interest as purchaser and on 3 October 1981 filed a caveat. This was withdrawn on 6 June 1982. Crestpoint lodged another caveat on 12 February 1982 and this, like the earlier caveat, was withdrawn on 6 June 1982. Crestpoint itself was never registered as proprietor.

On 3 and 6 February 1982, Tunas filed a caveat with regard to 'car park spaces on the second floor'. Tunas on 6 February 1982 withdrew it. On the same day, it filed another identical caveat and again withdrew it on 9 February 1982.

On 31 May 1982 Mayer sold the property to Carrian. The transfer had 'nil' against 'prior encumbrances' and Suwarna as original purchaser consented 'to and directs the above transfer to the transferee', ie Carrian. No reservation was made on the 14 parking lots. On the same day, Carrian mortgaged the property to Wardley and again 'prior encumbrances' were noted as 'nil'.

On 2 June 1982 Carrian lodged the transfer to it of the property as defined above. Wardley as mortgagees filed a caveat. The transfer to Carrian and Carrian's mortgage to Wardley are duly signed and sealed on the certificate of title on 1 July 1982.

On 16 June 1983 Tunas lodged a caveat in respect of the 14 parking lots. When the property was transferred to Carrian and when Carrian mortgaged the property to Wardley, there was no caveat in respect of whatever interest Tunas may have had in the 14 parking lots.

Carrian went into receivership and Wardley in the exercise of their power of sale sold Tunas Building to Jessie on 10 June 1985. The next day Jessie lodged for registration an instrument (I/6058D) of the transfer to them of the property by Wardley as mortgagors. On the certificate of title, the mortgage to Wardley and whatever interest Carrian had were extinguished. Upon the lodgment of instrument (I/6058D) of transfer of title to Jessie, the registry gave notice to Tunas under s 104(1) of the Land Titles Act stating that a transfer of Tunas Building has been presented for registration. On 18 July 1985, Tunas issued the writ with the statement of claim endorsed thereon commencing the present proceedings and the next day obtained an ex parte injunction against the 'Registrar of Land Titles'.

In support of the ex parte injunction, the affidavit affirmed by Tong Djoe was filed. In this affidavit, most of the facts set out by me were recited. However, some key facts were not. Amongst them is the lodgment and subsequent withdrawal of two caveats in respect of the car park spaces on the second floor. This was in February 1982.

Let me first refer to the transaction that took place on 31 May 1982. Mayer with the consent of Suwarna transferred the property to Carrian with no reservation of the interest of Tunas in the 14 parking lots. At that date, there was no caveat in respect of the 14 parking lots. In fact, as stated above, two caveats previously lodged had been withdrawn by Tunas.

Carrian and Wardley as mortgagees were entitled to assume that neither Tunas nor anyone else had any interest in the second floor of Tunas Building. The effect of caveats to protect an unregistered interest in land is provided for in s 41 of the Land Titles Act. Whatever interest Tunas had in the 14 parking lots was, by s 41(4), lost by the withdrawal by Tunas of the two caveats in February 1982.

In the statement of claim and in Tong Djoe's affidavit, breaches of contract are alleged against the second defendant. Against the third defendant, there is a claim for a declaration that Tunas have the irrevocable right or licence to the free and uninterrupted use of the 14 parking lots and an injunction was also sought to restrain the Registrar from registering the instrument of transfer no I/6058D.

Set out below are facts which certainly were known to Tong Djoe or Tunas, or which, with little effort, could be discovered by them from the registry and the certificates of title at the time the writ was issued were not disclosed to the judge hearing the ex parte application. Against each fact is set out the effect of the particular fact or facts under the Land Titles Act. The facts and their respective effects are:

(a) the lodgment by Tunas on 3 and 6 February 1982 of two caveats and the subsequent withdrawal by Tunas of each of the two caveats, respectively, on 6 and 9 February 1982. These caveats claim for Tunas an interest in the 'car park spaces on the second floor'. The withdrawals are material to s 41(4) which provides that any priority conferred by that section is lost if the caveat in respect of which priority is claimed is withdrawn. The withdrawals also show abandonment by Tunas of the claims;

(b) the lodgment on 2 June 1982 by Carrian of the transfer instrument I/11883C whereby the transfer of the property to Carrian was notified on the register. By s 41(3), 'the lodgment of an instrument for registration ... has the same effect as the entry, on the date of such lodgment, of a caveat protecting' the indefeasibility interest of Carrian without any notice of any interest Tunas may have had in the 14 parking lots;

(c) the registration by signature and seal of the Registrar on 1 July 1982 of the transfer referred to in (b) above to Carrian. By s 37(1) the entire interest in the property (inclusive of the 14 parking lots) passed to Carrian.

(d) the registration of the mortgage by instrument I/11884C on 1 July 1982 of the property to Wardley and the lodgment on 11 June 1985 on instrument

I/6058D by Wardley in exercise of its power of sale as mortgagee to Jessie of the registered estate or interest in Tunas Building. By s 67(2) the interest of Wardley as mortgagor passed and vested in Jessie free of all prior unregistered interests.

By s 41(3) the lodgment of instrument for registration has the same effect as the entry on the date as the lodgment of a caveat protecting the interest claimed. The lodgment on 11 June 1983 for registration or transfer I/6058D by the very fact of lodgment itself gave priority over the lodgment for Tunas on 16 June 1983 of the caveat in respect of any interest that Tunas had in the parking lots. This caveat (over which the lodgment of the transfer to Carrian, the mortgage to Wardley and the transfer to Jessie had priority) is the very foundation of the entire claim of Tunas in this action against Jessie and the registry.

The parties who gave Jessie full title had full title to the property, inclusive of the 14 parking lots, and they acquired their interest in the property when Tunas itself had lost any interest they may have had in the 14 parking lots.

The non-disclosure of these facts referred to above to the judge hearing the ex parte application constituted failure to make full and frank disclosure. To these elements of non-disclosure must be added the failure to include a copy of the plan annexed to the deed of 6 August 1981 in exh TJ-3 to Tong Djoe's affidavit.

There is also further non-disclosure of material facts shown by the amendments made to the statement of claim after the ex parte application. The amendment pleads facts additional to those pleaded in the original statement of claim. This must be because the plaintiffs considered them material. If they now consider them material, the question arises, why were these facts not pleaded in the original statement of claim and made known to the judge hearing the ex parte application?

Specifically, the amended statement of claim was filed two weeks after the grant of the ex parte application. In paras 10 and 11 are pleaded facts, set out hereinafter, very material to a judge hearing the ex parte application. These facts were not disclosed to the judge and in my view, this went beyond mere non-disclosure. It was suppression of very material facts and by itself justified my dissolving the injunction granted ex parte.

The 14 parking lots are the only subject of dispute between Tunas and Jessie. They are all on the second floor of the property. The injunction obtained was far wider in terms and is not restricted to the 14 parking lots or even to the parking area on the second floor. It extends to the whole estate that is registered under subsidiary strata certificate of title registered in Vol 81 Folio 86, ie the property.

The caveat filed by Tunas on 16 June 1983 is exhibited as TJ-4 to Tong Djoe's affidavit filed in support of the ex parte application. The land or part thereof against which the caveat was filed is described in the caveat as part of the property 'comprising those car park spaces on the second floor of Tunas Building' edged in red on the annexed plan and numbered 1 to 12 and 16 and 17. The injunction asked for and obtained should have been similarly limited.

It is a well-settled principle that the terms of an ex parte application should be restricted to the minimum necessary to protect the claimed interest of the applicant. In *Blakemore* v *Glamorganshire Canal Navigation*[8] at p 185, Lord Brougham LC said that the principle is that a court should 'limit its discretion in granting injunctions, at least where no special circumstances occur ... only to such restraint ... as may suffice to stop the mischief complained of ...'. In the present case, the terms asked for and granted ex parte went far beyond the necessary minimum. This itself is a good ground for setting aside the ex parte injunction.

The amended statement of claim, which was not before the judge hearing the ex parte application, in paras 10 and 11 pleads that the caveats of February 1982 were withdrawn by Tunas to enable the sale of the property by Mayer to Suwarna and by Suwarna to Crestpoint. Further, that Mayer had undertaken to indemnify the plaintiffs for any fees that the plaintiffs might have to pay in the event that Crestpoint refused to honour the agreement made between the plaintiffs and Suwarna. This clearly shows that in the contemplation of Tunas themselves, damages would have been an adequate remedy if they did not have rights to the 14 parking lots. The adequacy of damages (which is recognized by Tunas) is itself a ground to discharge the ex parte injunction.

According to Tunas, they acquired rights of the 14 parking lots by the deed of 6 August 1981. It is strange that they did not file a caveat forthwith. As stated above, they did in February 1982 file caveats but these were withdrawn. Tunas subsequently filed a caveat on 16 June 1983 but this was only after Carrian refused to recognize the right of Tunas to use the 14 parking lots. To me, this delay in filing the caveat, particularly when other parties had acquired rights, amounts to laches on the part of Tunas. This laches itself is a sufficient ground for discharging the injunction obtained ex parte.

In the light of the law referred to and for reasons of failure to make full and frank disclosure, I discharged the injunction. As will be apparent, unnecessarily wide terms of the injunction, adequacy of damages and laches also each by itself constitute sufficient grounds for discharge of the injunction. In any case, each is an additional ground.

There was a second application before me. This was an application by the Registrar of Titles that the statement of claim be struck out as against the fourth defendant.

Before I deal with the application, there is one point not taken by the Registrar of Titles which I cannot ignore in law. The Registrar of Titles is a legal personality and a creation of statute. The relevant provision is s 5(1). A statutory legal personality has only one name and that is the name given by the statute creating that legal personality. By s 5(1), the legal personality created is the 'Registrar of Titles'.

The fourth defendant in this action is described as 'the Registrar of Land Titles'. There is no such legal personality and a writ against a person so described has no standing in that there is no legal personality against whom it can proceed. Therefore, the fourth defendant (as named in the writ) is not properly a party to these proceedings as no such legal personality exists.

The Registrar of Titles himself has no interest in this action. He is not interested in the property, the 14 parking lots or any part of it. He merely carries out certain statutory functions under the Act.

Where an injunction is granted, the Registrar acts in compliance with the injunction upon service of the injunction upon the Registrar. Any disregard by the Registrar of the terms of an injunction will constitute a contempt of court. In this context, the Registrar is very much like a person with assets of a defendant who is served by the plaintiff with a Mareva injunction. The Registrar, even if properly named as a party, should not have been made a party and the application that the statement of claim be struck out as against the Registrar was a proper one and I accordingly struck it out.

Order accordingly.

Solicitors: *Lee Woo & Partners*; *Godwin & Co.*

Reported by *Terence Tan Bian Chye*

BRUNEI REPORTS

Public Prosecutor v Sayidina Ali bin Ibie & Ors

HIGH COURT (BANDAR SERI BEGAWAN) — CRIMINAL TRIAL NO 8 OF 1988
ROBERTS CJ
12 JANUARY 1989

Criminal Law — Forged currency — Receipt and possession of — Whether elements of offence proved by prosecution — Defendant did not know or had reason to believe that notes were forged — No case to answer — Penal Code, ss 489(B) & 489(C)

Criminal Procedure — Sentencing — Two and a half years' imprisonment for offence of receiving forged currency — Defendant played lesser role in distributing forged currency than co-defendant — Seriousness of offence to be taken into account — Penal Code, s 489(B)

Criminal Procedure — Sentencing — Four and a half years' imprisonment for offence of possession of forged currency — Large amount of forged currency brought in from abroad with object of profiting from its distribution — Essential that Brunei currency be protected — Serious offence — Penal Code, s 489(C)

In this case, the first defendant was charged with receiving $3,900 in forged $100 Brunei notes, contrary to s 489(B) of the Penal Code. The second defendant was also charged under s 489(B) and, alternatively, under s 489(C). The third defendant was found in possession of $52,640 in $100 and $10 Brunei currency notes and was charged under s 489(C) of the Penal Code. Both the first and third defendants pleaded guilty to the charges but the second defendant submitted that he had no case to answer on either of the two charges.

According to the prosecution's case, the first defendant was arrested when he was a passenger in a car driven by a police officer in plainclothes, with a police informer as the other passenger. When arrested, he was in possession of the forged Brunei notes. As for the third defendant, he was approached by a man in Sabah and had brought back with him to Brunei a very substantial quantity of forged currency notes. These notes were subsequently found in his possession. According to the third defendant, it was his task to arrange for the exchange of the forged notes with genuine ones.

Held, discharging the second defendant and convicting the first and third defendants:

(1) The only evidence against the second defendant is that of his own statement made to a police officer. In order to establish that he committed offences under s 489(B) or s 489(C), the prosecution must show in each case that the defendant knew or had reason to believe the notes to be forged.

(2) The statement shows that the second defendant was in possession of a substantial sum of forged Brunei currency which he had received from the third defendant. There is nothing in it which suggests that the second defendant, when he was in possession of the notes, knew them to be forged or had reason to do so. The second defendant has no case to answer on either of the two charges.

(3) The distribution of forged currency, even though it may not be of a very high standard, is necessarily a serious